

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§
	§ Subchapter V
Scott Vincent Van Dyke	§
	§ Case No. 21-60052
Debtor.	§ Christopher M. Lopez

**DEBTORS' APPLICATION FOR AN ORDER PURSUANT TO SECTION 327(e) OF
THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION
HENKE, WILLIAMS & BOLL, LLP AS SPECIAL LITIGATION COUNSEL**

THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THIS APPLICATION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY-ONE (21) DAYS FROM THE DATE THAT THIS APPLICATION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE APPLICATION SHOULD NOT BE GRANTED; IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE APPLICATION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE APPLICATION AT THE HEARING.

Scott Vincent Van Dyke (“Van Dyke” or the “Debtor”) by and through his undersigned attorneys, hereby files this Application (“Application”) for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing the Employment and Retention of Henke, Williams, & Boll, LLP (the “Henke Law Firm”) as special litigation counsel and in support hereof, respectfully states as follows:

**I.
JURISDICTION AND VENUE**

1. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of Subchapter V case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II.
BACKGROUND & STATEMENT OF CASE

2. Van Dyke filed a voluntary petition for relief on May 25, 2021 (the “Petition Date”) under Chapter 11 of Title 11, United States Code 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) with a Subchapter V election. The Debtor’s case is pending before the United States Bankruptcy Court for the Southern District of Texas, Victoria Division.

3. Pursuant to Bankruptcy Code 1107(a) and 1108, Mr. Van Dyke is managing the estate as debtor in possession. Melissa Haselden has been appointed Subchapter V Trustee.

4. Prior to the bankruptcy filing, Mr. Van Dyke was involved in several complex litigation matters. Shortly after the filing of this bankruptcy, a motion for relief from the automatic stay (Docket no. 16) was filed by Eva Engelhart, Chapter 7 Trustee in *In re Anglo-Dutch Petroleum International, Inc.*¹, requesting that the Bankruptcy Court lift to the automatic stay to proceed with the following two lawsuits that are pending in the United States District Court for the Southern District of Texas: *Engelhart v. Greenberg Peden, P.C.*, Case No. 4:19-cv-03101(the “Swonke Litigation”) and *Engelhart v. Van Dyke*, Case No. 4:19-cv-02894 (the “Fraudulent Transfer Litigation”). Both the Swonke Litigation and the Fraudulent Transfer Litigation matters are before the Honorable Vanessa Gilmore.

5. The Bankruptcy Court held a hearing on Trustee Engelhart’s motion for relief from the stay on July 7, 2021 and lifted the stay for the reasons stated on the record. On July 16, 2021, Judge Gilmore conducted status conference where she indicated that she would rule on two pending motions for summary judgment.

6. Mr. Van Dyke was previously represented by Jett Williams of Henke, Williams & Boll, LLP (the “Henke Law Firm”) in the Swonke Litigation and the Fraudulent Transfer

¹ case number 19-30797

Litigation and has withdrawn as counsel in the Fraudulent Transfer Litigation. Mr. Van Dyke desires to continue employment of the Henke Law Firm as special counsel in the Swonke Litigation.

III.
RELIEF REQUESTED

8. The Debtor seeks entry of an order pursuant to § 327(e) of the Bankruptcy Code authorizing the employment and retention of the Henke Law Firm as special litigation counsel.

IV.
RETENTION OF HENKE, WILLIAMS & BOLL, LLP

9. The Debtor seeks to retain and employ the Henke Law Firm pursuant to 11 U.S.C. § 327 to serve as the Debtor's special counsel in the Swonke Litigation, which include:

- i. Preparation and filing of all appropriate, answers, motions and other legal papers as necessary to further the Debtor's interests and objectives in the Swonke Litigation
- ii. Assistance to the Debtor in any matters relating to or arising out of the Swonke Litigation

10. Because of the legal services required in the above referenced litigation, the Debtor believes the employment of Henke Law Firm for all the purposes set forth above are appropriate and in the best interest of the Debtor's estate.

11. The Debtor believes that the Henke Law Firm possesses extensive knowledge and expertise in the areas relevant to this case and that the Henke Law Firm is well qualified to handle the claims and liabilities relating to the Swonke Litigation. The Henke Law Firm has agreed to compensation on a contingency fee basis to be approved by this Court. Attached as **Exhibit 1** is the retention agreement between Mr. Van Dyke and the Henke Law Firm.

V.

THE HENKE LAW FIRM HOLDS NO ADVERSE INTEREST

12. Under § 327(e) of the Bankruptcy Code, the trustee is authorized to employ an attorney, who has represented the debtor, on a specified special purpose if retention is in the best interest of the estate and such attorney does not represent or hold any interest adverse to the debtor or the estate with respect to the matter on which such attorney is to be employed. 11 U.S.C. §§ 101(14) and 327(e). Section 1107(b) of the Bankruptcy Code modifies §§ 101(14) and 327(a) in cases under chapter 11 of the Bankruptcy Code, providing that a person is not disqualified for employment under § 327(a) of the Bankruptcy Code by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case. 11 U.S.C. § 1107(b).

13. To the best of the Debtor's knowledge, the Henke Law Firm does not have any relationship with the creditors and interested parties involved in the Swonke Litigation. The details of all other connections between the Henke Law Firm and the parties involved in the Swonke Litigation are set forth in the Declaration of Jett Williams III ("Declaration"), which is attached to and incorporated into this Application as **Exhibit 2**. Except as set forth in the Declaration, to the best of the Debtor's knowledge, the Henke Law Firm does not have any connections with the creditors and interested parties involved in the Swonke Litigation which would be adverse as to the Debtor. Based upon the Declaration, the Debtor believes that the Henke Law Firm holds no adverse interest as to the scope of the matters for which it is being specifically retained, and is qualified to be employed by the Debtor pursuant to § 327(e) of the Bankruptcy Code.

VI.
TERMS OF THE ENGAGEMENT

14. The Debtor has agreed to engage the Henke Law Firm pursuant to a contingency fee arrangement (**Exhibit 1** hereto), subject to approval of this Court and compliance with applicable provisions of the Bankruptcy Code. The engagement of the Henke Law Firm will be based on a base contingent fee of 15% of any settlement or recovery by or on behalf of the Debtor, an additional 5% of any settlement for each level of appeal taken by any party, and an additional 5% for any settlement or recovery for each remand requiring more than entry of an order of judgment.

VII.
PRAYER

WHEREFORE, the Debtor requests that this Court enter an order approving the employment and retention of Henke, Williams & Boll, LLP as special counsel for the Debtor in this proceeding and granting such other and further relief as the Court may deem just and proper.

Respectfully submitted on the 31st day of August, 2021.

TRAN SINGH, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021 a true and correct copy of the foregoing document was served via the Court's ECF System on all parties requesting notice in this proceeding as well as the parties listed on the attached service list by regular mail.

By: /s/ Susan Tran Adams
Susan Tran Adams